IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CRIMINAL NO. 3:02CR195-1

UNITED STATES OF AMERICA)	
)	
)	
VS.)	ORDER
)	
)	
JOHN CHARLES BARKLEY)	
)	

THIS MATTER is before the Court on the Defendant's motion for reconsideration of an Order denying as moot his application for a certificate of appealability.

On June 20, 2005, Defendant filed a pleading which he captioned, "Defendant Barkley's Application for Certificate of Appealability (COA) pursuant to 28 U.S.C. § 2255." The only relief sought in that pleading was a certificate of appealability. However, Defendant has never filed a motion pursuant to 28 U.S.C. § 2255; and, as a result, the motion was denied as moot.

In the present motion, Defendant chastises the undersigned for failing to convert the motion into one pursuant to § 2255, claiming that he mistakenly captioned the pleading. "Let's not play games," the Defendant notes. **Defendant Barkley's Motion for Reconsideration, filed July 15, 2005, at 2.** And, he remarks that "a rose by any other name, is still a rose. Wouldn't you agree? So, let's not get 'hung up' on petition caption 'titles.' You know exactly what I mean[.]" *Id.*, at 3.

The Defendant's lecture is in vain. The Fourth Circuit Court of Appeals has directed district courts not to do the very thing the Defendant here has requested. In *United States v*.

Emmanuel, 288 F.3d 644 (4th Cir. 2002),¹ the Fourth Circuit reversed the undersigned for construing a motion as one pursuant to § 2255 when it had been captioned by a petitioner for other relief. The Court takes its direction from the Fourth Circuit and is unable to simply disregard the captions of pleadings as styled by petitioners.

If the Defendant desires to file a motion pursuant to 28 U.S.C. § 2255, he may do so as his statutory time has not expired. The undersigned is not allowed to construe his motions styled otherwise as seeking such relief. Nor is the undersigned obligated to notify the petitioner that motions styled otherwise will be converted unless the Court, in fact, intends to do so. The Court does not intend to do so because that could deprive a petitioner of the opportunity to raise every issue which he desires to raise in his initial, and only, motion pursuant to § 2255.

IT IS, THEREFORE, ORDERED that the Defendant's motion for reconsideration is hereby **DENIED**.

¹The Defendant has cited this case in his motion.

Signed: July 26, 2005

Lacy H. Thornburg United States District Judge